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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,

Plaintiff,

vs.

BLENDJET INC., a Delaware corporation,

Defendant.

**DEFENDANT BLENDJET INC.'S
RESPONSE TO BLENDTEC INC.'S
MOTION TO COMPEL RESPONSES TO
JUNE 22, 2022 DISCOVERY REQUESTS**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell
Magistrate Judge Dustin B. Pead

Defendant BlendJet Inc. hereby responds to Plaintiff Blendtec, Inc.’s Motion to Compel Responses to Blendtec’s June 22, 2022 Discovery Requests. (Dkt. 50 (the “Motion”)).

The bases for the majority of Blendtec’s complaints in the Motion are not entirely clear. BlendJet agreed to produce documents (including non-custodial and custodial ESI) in response to Blendtec’s June 22, 2022 requests for production. (*See* Dkt. 50-2 at 20-45.) To date, BlendJet has produced 999 documents of responsive non-custodial ESI, while Blendtec has only produced 460 documents in total. BlendJet disputes Blendtec’s characterizations of the responsiveness of BlendJet’s productions, especially with respect to whether such documentation supports BlendJet’s affirmative defenses. (*Compare* Motion at 2 *with* Dkt. 50-4 at 1 (identifying non-custodial ESI produced in response to Blendtec RFP Nos. 22 and 23)).

BlendJet has consistently stated that it has “substantially completed its production of non-custodial ESI” after conducting a reasonable search for such documentation (and indeed, has stated as much since Sept. 30, 2022). (*See, e.g.*, Dkt. 50-4.) BlendJet’s reservation of its right to produce additional responsive non-custodial ESI if/when it discovers such documentation in the future is not only reasonable, but also reflective of BlendJet’s discovery obligations under Fed. R. Civ. P. 26(e). There is no need for the Court to order BlendJet to “certify” that it has completed its production of non-custodial ESI in response to any request found in Blendtec’s June 22 discovery.

Further, BlendJet’s invocation of the “ongoing” status of discovery is an appropriate response to Blendtec’s concerns. (*See* Motion at 2.) The parties have not begun production of custodial ESI, as BlendJet has repeatedly pointed out. (*See* Dkt. 50-4 at 2, 3, 4, and 5.) Blendtec itself acknowledges this fact in its co-pending “Motion Relating to Scope of Email Discovery.” (Dkt. 53.) For much of its existence, BlendJet was an early-stage, fast-iterating start-up that was closely managed by its co-founding executives. As such, it should be unsurprising that BlendJet

possesses little non-custodial documentation, particularly when compared against the small volume of documents produced by Blendtec despite Blendtec being founded in 1975. (*See* Dkt. 2 at ¶ 6.) Responsive custodial ESI stands to be produced in the near future.

Finally, with respect to Blendtec RFP No. 26, BlendJet has produced JET000000001, which supplies the information that BlendJet agreed to produce in response to that request: BlendJet’s “annual financial statements reflecting sales of its portable blender products and related accessories to customers and retail partners based in the United States ‘under’ the BlendJet Marks, from 2017 to the present.” (Dkt. 52-4 at 5.) The information in JET000000001 is drawn from BlendJet’s audited financial statements, which are overbroad because they are not limited to BlendJet’s operations in the United States. (*Id.*) Blendtec fails to cite any reason why it might need BlendJet’s full financial statements that are not limited to sales in the U.S., instead of, or in addition to, JET000000001.

BlendJet requests award of its attorney’s fees under Rule 37(a)(5)(B).

Dated: January 13, 2023

PARSONS BEHLE & LATIMER

By /s/ Nathan D. Thomas
NATHAN D. THOMAS

Attorneys for Defendant BlendJet Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of January, 2023, a true and correct copy of the foregoing document was filed with the Court's CM/ECF system and served on the following counsel of record via the CM/ECF notification system:

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Executed on January 13, 2023, at Salt Lake City, Utah.

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